

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT EMMA, Custodian, IRA, DTD
7/10/97,

Plaintiff,

VS.

Civil Action No. 04-CV-12106 NMG

RS INVESTMENT MANAGEMENT, L.P.,
PFPC DISTRIBUTORS, INC., G.
RANDALL HECHT, LEONARD B.
AUERBACH, JEROME S. CONTRO,
JOHN W. GLYNN JR. and MICHAEL
MCCAFFERY,

Defendants, and

RS EMERGING GROWTH FUND,

Nominal Defendant.

ASSENTED TO MOTION FOR DISMISSAL WITHOUT PREJUDICE

Plaintiff Robert Emma, with the assent of Defendants RS Investment Management, L.P., PFPC Distributors, Inc., G. Randall Hecht, Leonard B. Auerbach, Jerome S. Contro, John W. Glynn Jr. and Michael Mccaffery and Nominal Defendant RS Emerging Growth Fund, hereby moves pursuant to Fed. R. Civ. P. 41(a) and Fed. R. Civ. P. 23.1, to dismiss this Action without prejudice and without costs, all rights of appeal being waived.

Pursuant to Fed. R. Civ. P. 23.1, this Court should approve the dismissal of this Action, without notice, because there is no prospect of any prejudice to the shareholders of RS Emerging Growth Fund. The dismissal is without prejudice and no

consideration is being paid to Plaintiff or his counsel.

Dated: May 31, 2005

/s/ Michelle H. Blauner

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Management, L.P., G. Randall Hecht,
Leonard B. Auerbach, Jerome S. Contro,
John W. Glynn Jr. and Michael Mccaffery
and Nominal Defendant RS Emerging
Growth Fund

/s/ Robert G. Jones

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Distributors, Inc. and Local Counsel for
All Defendants